FILED
United States Court of Appeals
Tenth Circuit

October 29, 2026

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA, on behalf of Environmental Protection Agency; STATE OF UTAH, on behalf of Utah Department of Environmental Quality; UTAH DIVISION OF AIR QUALITY,

Plaintiffs - Appellees,

v.

FOURPOINT RESOURCES, LLC,

Defendant - Appellee.

UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION,

Movant - Appellant.

No. 25-4121
(D.C. No. 2:24-CV-00723-RJS-DBP)
(D. Utah)

ORDER AND JUDGMENT*

Before **BACHARACH**, **EBEL**, and **FEDERICO**, Circuit Judges.

The United States sued Ovintiv USA Inc., the predecessor in interest to Defendant FourPoint Resources, LLC, under the Clean Air Act ("CAA"). Relevant

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

here, the United States alleged that emissions from the oil and gas production facilities Ovintiv was operating on the Ute Indian Tribe's Uintah and Ouray Reservation violated the CAA. The United States and Ovintiv resolved these claims through a consent decree that the district court approved and entered as the court's judgment. The Tribe then moved to intervene, alleging that the United States failed to consult with the Tribe before agreeing to the consent decree. The Tribe sought to have the consent decree vacated until the United States fulfills its obligation to consult with the Tribe. The district court denied the Tribe's motion, ruling the Tribe had failed to show it has Article III standing to intervene. Having jurisdiction under 28 U.S.C. § 1291, see Barnes v. Sec. Life of Denver Ins. Co., 945 F.3d 1112, 1115 (10th Cir. 2019), we AFFIRM.

I. BACKGROUND

The parties are aware of the relevant facts. Briefly stated, this appeal stems from a larger legal action that the United States and the State of Utah ("Plaintiffs") brought against Ovintiv. Plaintiffs asserted federal and state air quality claims arising from 139 of Ovintiv's oil and gas production facilities located on both Indian and non-Indian land.

Our focus for purposes of this appeal is limited to the United States' enforcement of the CAA against Ovintiv for five of its oil and gas facilities located on the Reservation. The United States Environmental Protection Agency ("EPA") has sole authority to enforce the CAA on the Reservation. Although the Tribe could apply to have the EPA delegate to the Tribe the authority to enforce the CAA on the

Reservation, see 42 U.S.C. § 7601(d); 40 C.F.R. Pt. 49, the Tribe has not applied for this authority.

After initiating this litigation, Plaintiffs lodged with the district court a proposed Consent Decree that they had previously negotiated with Ovintiv. The Consent Decree, which resolved all federal and state claims involving Ovintiv's 139 production facilities, required, among other things, that Ovintiv pay a $5,500,000 civil penalty, half to the United States and half to Utah; ensure that its oil and gas production facilities comply with state and federal air quality laws; and undertake a project to mitigate the offending emissions.

After lodging the proposed Consent Decree with the district court, the United States gave notice of the proposed Consent Decree in the Federal Register and invited public comments. See Notice of Lodging of Proposed Consent Decree Under the Clean Air Act, 89 Fed. Reg. 81941-01 (Oct. 9, 2024). The only public comment received was from the Tribe, which asserted that the United States failed to consult with the Tribe before agreeing to the proposed Consent Decree with Ovintiv. After the time for public comments ended, the United States moved for the district court to enter the Consent Decree. In so moving, the United States asserted that it had adequately consulted with the Tribe. Finding the proposed Consent Decree to be fair, reasonable, adequate, and lawful, the district court entered the decree as the court's final judgment and closed the case.

Six days later, the Tribe filed a motion to intervene under Fed. R. Civ. P. 24, as a matter of right and permissively, in order to have the Consent Decree set aside until the United States fulfills its obligation to consult with the Tribe. In support of its motion to intervene, the Tribe did not challenge the substance of the Consent Decree, but instead asserted that,

> [a]t all stages of the United States' enforcement action against Ovintiv and subsequent Consent Decree negotiations, the United States failed to meaningfully consult with the Tribe on a government-to-government basis and failed to give the Tribe an opportunity to provide input or otherwise engage in the Consent Decree negotiation process in any capacity.

(Aplt. App. 502 ¶ 62.)[1]

The district court denied the intervention motion, ruling the Tribe failed to establish its Article III standing to intervene. The Tribe appeals that decision. We review the district court's Article III standing determination de novo. See Sanchez v. Torrez, 173 F.4th 1202, 1212 (10th Cir. 2026).

[1] In moving to intervene, the Tribe asserted that, if allowed to intervene, it would 1) file a Fed. R. Civ. P. 60(b) motion to set aside the Consent Decree, and 2) assert a counterclaim under the Administrative Procedures Act against the United States for "unlawful inaction"—failing to consult with the Tribe before entering into the Consent Decree. As relief under the proposed APA counterclaim, the Tribe would seek to "[s]et aside the Consent Decree until such time as the United States, through the [EPA], fulfills its obligations to the Tribe under federal law, including as embodied in the [April 2023 Memorandum of Agreement] between EPA Region 8 and the Tribe." (Aplt. App. 503.)

II. DISCUSSION

The Tribe must establish its own Article III standing to intervene because it is seeking relief different from the relief the United States pursued in this litigation.[2] To establish Article III standing, the Tribe must show "'injury in fact, causation, and redressability.'" First Choice Women's Res. Ctrs., Inc. v. Davenport, 608 U.S. 174, 183 (2026) (quoting Diamond Alt. Energy, LLC v. EPA, 606 U.S. 100, 111 (2025)). The district court concluded that the Tribe failed to show that it had suffered an injury in fact from the United States' failure to consult the Tribe before entering into the Consent Decree with Ovintiv. To establish an injury in fact, the Tribe has to show "an invasion of a legally protected interest which is (a) concrete and particularized, . . . and (b) actual or imminent, not conjectural or hypothetical." Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992) (internal quotation marks omitted).

"The Supreme Court has recognized that, for standing purposes, a party's injury may be a procedural one 'so long as the procedures in question are designed to protect some threatened concrete interest of [the party] that is the ultimate basis of [its] standing.'" New Mexico v. Dep't of Interior, 854 F.3d 1207, 1215 (10th Cir. 2017) (quoting Lujan, 504 U.S. at 573 n.8). "To establish standing in such

[2] See Town of Chester v. Laroe Estates, Inc., 581 U.S. 433, 435, 440 (2017) (holding that party seeking to intervene as a matter of right in order to pursue relief not requested by the plaintiff must possess Article III standing to pursue that different relief); United States v. RaPower-3, LLC, 341 F.R.D. 311, 316–17 (D. Utah 2022) (applying same rule for permissive intervention).

circumstances, a plaintiff 'need show only that compliance with the procedural requirements could have better protected its concrete interests,' . . . and thus that the procedural violation created a 'risk of real harm.'" Id. (quoting WildEarth Guardians v. U.S. E.P.A., 759 F.3d 1196, 1205 (10th Cir. 2014), and Spokeo, Inc. v. Robins, 578 U.S. 330, 341 (2016)). But "'bare procedural violation[s], divorced from any concrete harm'" do "not suffice for Article III standing." TransUnion LLC v. Ramirez, 594 U.S. 413, 440 (2021) (quoting Spokeo, 578 U. S. at 341).

The Tribe asserts three injuries that it suffered from the United States' failure to consult with the Tribe before entering into the Consent Decree with Ovintiv: injury to 1) the Tribe's sovereignty, 2) its quasi-sovereign interests, and 3) its economic interests. We agree with the district court that none of these three asserted injuries are sufficient to support the Tribe's standing to intervene and adopt much of the district court's reasoning.[3]

A. The Tribe has shown no injury to its sovereign or quasi-sovereign interests

In asserting injury to its sovereignty and to its quasi-sovereign interests, the Tribe relies on Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez, 458 U.S. 592 (1982) ("Snapp & Son"). In rejecting the Tribe's arguments, the district court assumed, without deciding, that the analysis in Snapp & Son—a case addressing state

[3] Because we affirm on this basis, we need not reach the United States' alternative grounds for affirming: that the United States had no obligation to consult with the Tribe but, in any event, the United States allegedly did consult with the Tribe in this case.

sovereign and quasi-sovereign interests, id. at 601–02—also applies to federally recognized tribes. We proceed under that same assumption.

1. The Tribe has not shown an actual injury to its sovereign interests

Snapp & Son identified two sovereign interests, id. at 601, which the Tribe asserts were both injured here.

a. Sovereign interest in creating and enforcing its own legal code

The first sovereign interest Snapp & Son identified is a sovereignty's interest in exercising "sovereign power over individuals and entities within the relevant jurisdiction—this involves the power to create and enforce a legal code, both civil and criminal." Id. We agree with the district court that the United States' alleged failure to consult here "does not prevent the Tribe from taking action against [Ovintiv] or otherwise enforcing tribal law." (Aplt. App. 664–65 (internal quotation marks omitted).)

This court has recognized, in addressing state sovereign interests, that "[f]ederal regulatory action that preempts state law creates a sufficient injury-in-fact to satisfy this prong" of the standing analysis. Wyoming ex rel. Crank v. United States, 539 F.3d 1236, 1242 (10th Cir. 2008). But that is not what occurred here. Instead, here only the United States, through the EPA, has authority to enforce the CAA on the Reservation given that the Tribe did not apply for authority to enforce the CAA on its Reservation. The Tribe makes no argument that the EPA's enforcing of the CAA on the Reservation has preempted any tribal law.

Relatedly, the Tribe, citing United States v. Wheeler, 435 U.S. 313, 323 (1978), superseded by statute on other grounds as recognized in United States v. Lara, 541 U.S. 193, 197–98 (2004), contends that it retains all facets of sovereign government not specifically divested by treaty or acts of Congress. But the CAA is an act of Congress. It gives the EPA authority to enforce the CAA on the Reservation unless and until the Tribe successfully seeks to have that authority delegated to it. As previously noted, the Tribe has never sought or obtained that authority.[4]

The Tribe also points to a 2023 Agreement between the Tribe and the EPA that provided that the EPA would consult with the Tribe before referring a civil enforcement action involving CAA violations in Indian country to the Department of Justice and would consider the Tribes' preferred remedies in civil administrative enforcement actions. But that 2023 Agreement explicitly provided that it "is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity against either of the Parties, their departments, officers, employees, agents, or any other person." (Aplt. App. 663 (quoting 2023 Agreement ¶ 9).) The Tribe asserts, however, that its tribal government adopted that 2023 Agreement, making it binding tribal law, which the United States violated by

[4] On appeal, the Tribe asserts that it is also "a sovereign landowner with a direct proprietary interest in the [Ovintiv] facility sites and the impacted air space." (Aplt. Br. 16.) But the Tribe does not develop that argument by, for example, asserting how the United States' exercising its authority to enforce the CAA against Ovintiv injured any of the Tribe's proprietary interests.

not consulting with the Tribe. The district court correctly rejected that argument, reasoning that Snapp & Son

> discusses the "power to create and enforce a legal code" in the context of exercising it "over individuals and entities within the relevant jurisdiction." 458 U.S. at 601. The Tribe may not enforce tribal law against the United States because "tribes are subject to plenary control by Congress." Ute Indian Tribe v. Lawrence, 875 F.3d 539, 542 (10th Cir. 2017) (quoting Michigan v. Bay Mills Indian Cmty., 572 U.S. 782, 788 (2014)). In other words, the Tribe cannot unilaterally enforce an unenforceable document (the Agreement) against the United States by simply enacting a tribal ordinance.

(Id. at 665 n.45.)

The Tribe has, thus, failed to show any injury to its sovereign interest in creating and enforcing its own legal code.

b. The sovereign interest in recognition by other sovereigns

The second sovereign interest that the Supreme Court identified in Snapp & Son is "the demand for recognition from other sovereigns—most frequently this involves the maintenance and recognition of borders." 458 U.S. at 601. But, as the district court correctly noted, there is no issue here regarding the Reservation's borders or any similar dispute. Nor has the Tribe cited any authority supporting the proposition that the United States' failure to consult in this case injured such an interest in some other way.

2. Quasi-sovereign interests

The Tribe next asserts that the United States' failure to consult with it before entering into the Consent Decree injured the Tribe's "'quasi-sovereign interest in upholding, protecting, and advancing the interests of its citizens' in its role as parens

patriae" (Aplt. App. 666).[5] The district court did not err in rejecting that standing argument.

The district court first questioned whether the Tribe could bring an action against the federal government in its capacity as parens patriae, in light of the Supreme Court's ruling "that 'a State does not have standing as parens patriae to bring an action against the Federal Government.'" (Id. (citing Snapp & Son, 458 U.S. at 610 n.16).)

Second, the district court went on correctly to reject the merits the Tribe's quasi-sovereign standing argument, reasoning that the CAA authorizes the United States to enforce the CAA on the Reservation on behalf of the members of the Tribe unless and until the Tribe applies for and obtains that authority itself. But the Tribe has not applied for that authority.

B. Economic injury

Lastly, the Tribe asserts that the United States' failure to consult with it before entering into the Consent Decree with Ovintiv injured the Tribe's economic interests. Economic injury can support Article III standing. See Czyzewski v. Jevic Holding Corp., 580 U.S. 451, 464 (2017) ("For standing purposes, a loss of even a small amount of money is ordinarily an 'injury.'"). But here, the economic injuries the

[5] See Snapp & Son, 458 U.S. at 602 (defining state's quasi-sovereign interests as a "set of interests that the State has in the well-being of its populace"; noting "a parens patriae action could rest upon the articulation of a 'quasi-sovereign' interest"); see also New Mexico v. Gen. Elec. Co., 467 F.3d 1223, 1243 n.30 (10th Cir. 2006) (noting "[t]he doctrine of parens patriae is a standing concept").

Tribe asserts are too speculative and hypothetical to support standing. See Lujan, 504 U.S. at 560; Wyoming v. U.S. Dep't of Interior, 674 F.3d 1220, 1235 (10th Cir. 2012).

The Tribe, for example, contends that, because "on-Reservation fossil fuel production is the Tribe's main source of government revenue," "it naturally follows that the Tribe suffers economic injury when its industry partners," like Ovintiv, "face financial burdens." (Aplt. Br. 23.) But the Tribe does not explain how requiring Ovintiv to comply with the CAA and to pay civil penalties when it does not comply, "direct[ly]" injures the Tribe's economic interests. Wyoming, 674 F.3d at 1231, 1234; see also id. at 1231–35.

The Tribe also generally asserts it was injured economically because the financial burdens that the Consent Decree imposes on Ovintiv—to pay civil penalties and comply with the CAA—do not provide the Tribe with any "offsetting value." (Aplt. Br. 23.) But the Tribe fails to assert why it is entitled to receive value from the United States' Consent Decree with Ovintiv, how that Consent Decree should be changed to give the Tribe value, and whether the United States would have been obligated to change the terms of the Consent Decree to allow the Tribe to receive value. The Tribe has failed to establish that the Consent Decree directly causes the Tribe economic injury.

III. CONCLUSION

The Tribe failed to establish that the United States' failure to consult with the Tribe before entering into the Consent Decree with Ovintiv injured the Tribe. The district court, therefore, did not err in concluding the Tribe failed to establish its Article III standing and, thus, could not intervene. We AFFIRM the denial of intervention.

Entered for the Court

David M. Ebel
Circuit Judge